IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

SUNDAY, THE 4TH JANUARY 2004 / 14TH PAUSHA 1928

MFA.No. 1242 of 1994()

OPMV.588/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PUNALUR
.....

APPELLANT:

NATIONAL INSURANCE CO.LTD.,
KOTTARAKKARA, REPRESENTED BY ITS
ASSISTANT MANAGER,
MOTOR THIRD PARTY CLAIMS OFFICES,
M.G.ROAD,
ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN
SRI.JACOB MATHEW

RESPONDENTS:

1. SATHYABATI PATRO,
W/O.T.BIJAYAKUMAR PATRO,
RED CROSS STREET,
BHANJANAGAR P.O.,
GANJAM DISTRICT,
ORISSA STATE.

2. RAJESWARI SENAPATHI,
BIJAYA BHANDAR,
BALUGAON P.O.,
PURI DISTRICT,
ORISSA.

3. SIVAJI PATRO,
CES(I) PVT.LTD.,
57, NEHRU PLACE,
NEW DELHI – 19.

4. DR.MOHAN PATRO,
MEDICAL TRUST HOSPITAL,
KOTTARAKARA.

BY ADV. SRI.S.GOPAKUMARAN NAIR FOR R4.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

==========

M.F.A. No. 1242 Of 1994

==========

Dated this the 4th day of January, 2007.

JUDGMENT

The insurer is the appellant. The 4th respondent is the owner and driver of a vehicle in which his father Kashi Vishwanathan was a passenger, when it met with an accident resulting in the death of Kashi Vishwanathan, three days after the accident. Respondents 1 to 3, the other children of Kashi Vishwanathan filed O.P.(M.V)No.588/1993 before MACT, Punalur and sought for an order for compensation. They charged the 4th respondent, their brother, of negligence resulting in the death of their father.

2. Insurer contested the proceedings contenting that the 4th respondent owner cum driver was not negligent and the victim of the accident, Kashi Vishwanathan, was living with the 4th respondent and the petitioners were not dependant of the deceased.

3. The Tribunal granted an interim award. Later on, after recording evidence and holding that taking into consideration the age of the deceased, the period he had undergone treatment after sustaining injuries, dependency etc., a sum of Rs.45,000/- was awarded as

compensation to petitioners 1 to 3. The Tribunal was well aware of the fact that the primary tort feasor, 4th respondent is also a son of the deceased. Therefore, the Tribunal made it specific that the compensation determined by it is that which is found due to the petitioners, that is the children of the deceased, excluding the primary tort feasor viz.4th respondent.

4. In this appeal the insurer contents that the amount of compensation being available to the estate of the deceased in entirety and in view of the provision of section 166 of the Motor Vehicles Act,1988 that an application for compensation shall be on behalf of the legal representatives entitle to compensation, the amount granted as of compensation has to be slashed by 1/4th, being an amount that the primary tort feasor would derive out of the estate of his dead father.

5. Having regard to the nature of the findings of the Tribunal as noticed above, in my view, the Tribunal consciously and cautiously made the award by determining the compensation due only to the other children of the deceased Kashi Vishwanathan, excluding the primary tort feasor, 4th respondent, though is his son. The concept of tort feasor getting contribution of the compensation payable on account of his own act qua the dis-entitlement of a heir to succeed to

the estate are not issues, this court needs to deliberate upon in this case.

In the result, I do not find any merit on this appeal. It fails and is hence dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

sj